



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-893


ARP: 02/01/2012 – 01/31/2013

Public Document

E&C/V: KJA

March 18, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Frozen Warmwater Shrimp
from the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China ("PRC") for the period of review ("POR") from February 1, 2012, through January 31, 2013. The Department preliminarily determines that Hilltop International ("Hilltop") and Zhanjiang Newpro Foods Co., Ltd. ("Newpro"), are not entitled to a separate rate because Hilltop and Newpro were unresponsive to the Department's requests for information, failed to provide the requested information by the deadline, and thus failed to establish their eligibility for a separate rate. Accordingly, both companies are being treated as part of the PRC-wide entity. As a result, the PRC-wide entity is now under review. We are preliminarily applying adverse facts available ("AFA") to the PRC-wide entity because elements of the entity, Hilltop and Newpro, failed to act to the best of their ability in complying with the Department's request for information in this review.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").



Background

On March 29, 2013, the Department initiated an administrative review of certain frozen warmwater shrimp from the PRC for the period February 1, 2012, through January 31, 2013.¹ The Department initiated an administrative review of 91 exporters of subject merchandise.² On May 24, 2013, the Department selected Hilltop and Zhanjiang Regal Integrated Marine Resources Co., Ltd. (“Regal”), for individual examination in this review.³ On June 21, 2013, the Department selected Newpro as an additional mandatory respondent because Hilltop did not file a response to Section A of the antidumping duty questionnaire.⁴ On October 31, 2013, the Department published in the Federal Register a notice that stated that the Department was rescinding the review with respect to Regal, because, effective February 1, 2012, the Department revoked the Order with respect to Regal.⁵ On February 7, 2014, Newpro informed the Department that it would not respond to any outstanding/additional questionnaires or submit to verification, and counsel to Newpro informed the Department that it no longer represents Newpro in this review.⁶

On April 1, 2013, the Department received a “no shipment certification”⁷ from Allied Pacific Food (Dalian) Co., Ltd. and Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. (collectively “Allied Pacific Group”).⁸ On April 12, 2013, the Department received a “no shipment certification” from Rizhao Smart Foods Co., Ltd. (“Smart Foods”).⁹ On April 29, 2013, the Department received a “no shipment certification” from Shantou Yuexing Enterprise Company (“SYEC”). In its certification, SYEC also requested that the Department rescind the review with respect to SYEC, pursuant to 19 CFR 351.213(d)(3).¹⁰

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.¹¹ Therefore, all

¹ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 78 FR 19197 (March 29, 2013) (“Initiation Notice”).

² See id.

³ See Memorandum to James Doyle, Director, Office 9, from Alan Ray, Senior International Trade Analyst, Office 9 “Antidumping Duty Administrative Review of Certain Frozen Warm water Shrimp from the People's Republic of China: Selection of Respondents for Individual Review” (May 24, 2013).

⁴ See Memorandum to James C. Doyle, Director, Office 9, from Catherine Bertrand, Program Manager, Office 9 “Selection of Additional Mandatory Respondent” (June 21, 2013).

⁵ See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Partial Rescission of Administrative Review: 2012–2013, 78 FR 65277 (October 31, 2013).

⁶ See Letter to the Secretary of Commerce from Newpro “Withdrawal From Review” (January 7, 2014).

⁷ Companies have the opportunity to submit statements certifying that they did not enter, export or sell subject merchandise to the United States during the POR.

⁸ See Letter to the Secretary of Commerce from Allied Pacific Group “No Shipment Certificate” (April 1, 2013).

⁹ See Letter to the Secretary of Commerce from Smart Foods “Entry of Appearance, Certificate of No Sales, and Application for APO” (April 12, 2013).

¹⁰ See Letter to the Secretary of Commerce from Shantou Yuexing “Shantou Yuexing Enterprise Company’s Request for rescinding an Administrative Review” (April 29, 2013).

¹¹ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (October 18, 2013).

deadlines in this review have been extended by 16 days. The revised deadline for the preliminary results of this review is now March 18, 2014.¹²

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹³ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the HTS, are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee’s shrimp sauce;¹⁴ (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing

¹² The deadline for the preliminary results of this review was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (i.e., March 18, 2014). See Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

¹³ “Tails” in this context means the tail fan, which includes the telson and the uropods.

¹⁴ The specific exclusion for Lee Kum Kee’s shrimp sauce applies only to the scope in the PRC case.

immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of these orders is dispositive.¹⁵

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (“NME”) country.¹⁶ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as a NME country for purposes of these preliminary results.

Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.¹⁷ In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁸ It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity

¹⁵ On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the CIT decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

¹⁶ See Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

¹⁷ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People’s Republic of China, 71 FR 29303, 29307 (May 22, 2006).

¹⁸ See Initiation Notice, 78 FR at 19198.

in a NME country under the test established in Sparklers,¹⁹ as amplified by Silicon Carbide.²⁰ However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.²¹

As noted above, Hilltop did not respond to the Department's questionnaire and, thus, failed to demonstrate its eligibility for a separate rate. Further, Newpro expressly refused to respond to the Department's requests for information or submit to verification and, thus, also failed to demonstrate its eligibility for a separate rate. Therefore, the Department preliminarily determines that there were exports of merchandise under review from PRC exporters (Hilltop and Newpro) that did not demonstrate eligibility for separate rate status. As a result, the Department is treating Hilltop and Newpro as part of the PRC-wide entity.²² Finally, as noted above, the Department initiated this review with respect to 91 exporters/producers of subject merchandise, rescinded the review with respect to one producer, Regal, and received three certifications of no shipments on behalf of four companies. However, because Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., and Smart Foods were found in prior segments to be part of the PRC-wide entity,²³ the Department preliminarily determines that 89 PRC exporters, including Newpro and Hilltop, did not demonstrate their eligibility for separate rate status in this review.²⁴ As a result, the Department is preliminarily treating these 89 PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.

¹⁹ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers").

²⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

²¹ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

²² See, e.g., Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review, 76 FR 66903, 66906-07 (October 28, 2011) (where the Department determined that certain unresponsive mandatory respondents had not demonstrated their eligibility for a separate rate as a result of their decision to terminate their participation in the review, and thus considered the companies to be part of the PRC-wide entity), unchanged in Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012).

²³ See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012) at Appendix II.

²⁴ Those companies are: Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., Aqua Foods (Qingdao) Co., Ltd., Asian Seafoods (Zhanjiang) Co., Ltd., Beihai Boston Frozen Food Co., Ltd., Beihai Evergreen Aquatic Product Science and Technology Co., Ltd., Beihai Wanjiang Marine Products Co., Ltd., Dalian Hualian Foods Co., Ltd., Dalian Shanhai Seafood Co., Ltd., Dalian Taiyang Aquatic Products Co., Ltd., Dalian Z&H Seafood Co., Ltd., Eimskip Logistics (Qingdao) Co., Ltd., Eimskip Logistics Inc., EZ Logistics Inc., EZ Logistics LLC, Fujian Chaohui International Trading, Fujian Dongshan County Shunfa Aquatic Product Co., Ltd., Fujian Rongjiang Import and Export Co., Ltd., Fuqing Minhua Trade Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Fuqing Yiyuan Trading Co., Ltd., Guangdong Gourmet Aquatic Products Co., Ltd., Guangdong Jinhang Foods Co., Ltd., Guangdong Shunxin Sea Fishery Co., Ltd., Guangdong Wanshida Holding Corp., Guangdong Wanya Foods Fty. Co., Ltd., Hai Li Aquatic Co., Ltd., Hainan Brich Aquatic Products Co., Ltd., Hainan Golden Spring Foods Co., Ltd., Hainan Hailisheng Food Co., Ltd., Hainan Xiangtai Fishery Co., Ltd., Haizhou Aquatic Products Co., Ltd., Hangzhou Tianhai Aquatic Products Co., Ltd., Hilltop International, Hua Yang (Dalian) International Transportation Service Co., Leizhou Beibuwan Sea Products Co., Ltd., Longhai Gelin Seafoods Co., Ltd., Longheng (Fuqing) Imp. & Exp. Co., Ltd., Longsheng Aquatic Co., Ltd., Maoming Xinzhou Seafood Co., Ltd., Olanya (Germany) Ltd., Qingdao Yuanqiang Foods Co., Ltd., Rizhao Smart Foods Company Limited, Rizhao Xinghe Foodstuff Co., Ltd., Rui'an Huasheng Aquatic Products Co., Ltd., Savvy Seafood Inc., Shandong Meijia

PRC-Wide Entity

As discussed above, because Hilltop did not provide information pertaining to its eligibility for a separate rate and Newpro has withdrawn from the review, we preliminarily determine that neither Hilltop nor Newpro demonstrated eligibility for a separate rate and are properly considered part of the PRC-wide entity. Specifically, Hilltop did not provide any information, including information pertaining to separate rate eligibility, and Newpro's withdrawal from the proceeding results in a record that is incomplete and unverifiable.

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of Total Adverse Facts Available to the PRC-Wide Entity

In the Initiation Notice, the Department stated that "if one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Frozen Warmwater Shrimp from the {PRC} who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part."²⁵ As noted above, the Department preliminarily determines that Hilltop and Newpro are not eligible for separate rates because Hilltop did not provide any information, including information pertaining to separate

Group Co., Ltd., Shanghai Linghai Fisheries Trading Co. Ltd., Shanghai Lingpu Aquatic Products Co., Ltd., Shanghai Smiling Food Co., Ltd., Shanghai Zhoulian Foods Co., Ltd., Shantou Haiyou Aquatic Product Foodstuff Co., Ltd., Shantou Jiazhou Foods Industry Co., Ltd., Shantou Jin Cheng Food Co., Ltd., Shantou Jintai Aquatic Product Industrial Co., Ltd., Shantou Longsheng Aquatic Product Foodstuff Co., Ltd., Shantou Ruiyuan Industry Company Ltd., Shantou Wanya Foods Fty. Co., Ltd., Shantou Yuexing Enterprises Co., Shenzhen Allied Aquatic Produce Development Ltd., Shenzhen Yudayuan Trade Ltd., Thai Royal Frozen Food Zhanjiang Co., Ltd., Xiamen Granda Import & Export Co., Ltd., Yancheng Hi-king Agriculture Developing Co., Ltd., Yanfeng Aquatic Product Foodstuff, Yangjiang Anyang Food Co., Ltd., Yangjiang Wanshida Seafood Co., Ltd., Yelin Enterprise Co., Ltd., Zhangzhou Xinwanya Aquatic Product Co., Ltd., Zhangzhou Yanfeng Aquatic Product, Zhanjiang Bo Bo Go Ocean Co., Ltd., Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd., Zhanjiang Fuchang Aquatic Products Co., Ltd., Zhanjiang Go Harvest Aquatic Products Co., Ltd., Zhanjiang Haizhou Aquatic Product Co. Ltd., Zhanjiang Hengrun Aquatic Co., Ltd., Zhanjiang Jinguo Marine Foods Co., Ltd., Zhanjiang Join Wealth Aquatic Products Co., Ltd., Zhanjiang Longwei Aquatic Products Industry Co., Ltd., Zhanjiang Newpro Food Co., Ltd., Zhanjiang Rainbow Aquatic Development, Zhanjiang Universal Seafood Corp., Zhejiang Daishan Baofa Aquatic Products Co., Ltd., Zhejiang Evernew Seafood Co., Ltd., Zhejiang Xinwang Foodstuffs Co., Ltd., Zhejiang Zhoufu Food Co., Ltd., Zhoushan Corporation, Zhoushan Genho Food Co., Ltd., Zhoushan Haiwang Seafood Co., Ltd.

²⁵ See Initiation Notice, 78 FR at 19208, fn 4.

rate eligibility, and Newpro withdrew from the proceeding. Consequently, both companies are now being treated as part of the PRC-wide entity for purposes of this review.

The PRC-wide entity, including Hilltop and Newpro, withheld information requested by the Department, failed to provide the requested information within the established deadlines, significantly impeded the proceeding, and provided information that cannot be verified. As a result, the Department preliminarily determines, in accordance with sections 776(a)(2)(A), (B), (C), and (D) of the Act, that the Department must rely on facts otherwise available to assign a dumping margin to the PRC-wide entity. Further, the Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation was shown. Hence, pursuant to section 776(b) of the Act, the Department preliminarily determines that because the PRC-wide entity failed to cooperate by not acting to the best of its ability, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

Selection of Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding.²⁶ The Court of International Trade ("CIT") and the Court of Appeals for the Federal Circuit ("CAFC") have consistently upheld the Department's practice.²⁷ The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."²⁸ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁹

Consistent with the statute, court precedent, and its normal practice, the Department is preliminarily assigning as AFA a rate of 112.81 percent to the PRC-wide entity, including Hilltop and Newpro. This margin, which is the PRC-wide rate from the final determination of

²⁶ See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504, 19507 (April 21, 2003).

²⁷ See KYD, Inc. v. United States, 607 F.3d 760, 766-67 (CAFC 2010) ("KYD"); Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (CAFC 1990) ("Rhone Poulenc"); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); Kompass Food Trading Int'l v. United States, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

²⁸ See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) ("SAA").

²⁹ See id.; see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910, 76912 (December 23, 2004), and D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (CAFC 1997).

the less-than-fair-value investigation, is the highest dumping margin on the record of any segment of this proceeding, and the rate currently applicable to the PRC-wide entity.³⁰

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.³¹ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.³² To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.³³ Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.³⁴

In this case, the AFA rate being assigned to the PRC-wide entity (112.81 percent), including Hilltop and Newpro, is the highest rate from any segment of this proceeding, and is the PRC-wide rate from the final determination of the less-than-fair-value investigation.³⁵ The Department has recently conducted corroboration analyses of this rate in light of changes made to our final determination in the less-than-fair-value investigation following litigation in the preceding AR7, as well as in two final redeterminations pursuant to court remand.³⁶ Further, no information was presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information continues to be reliable.

³⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, 69 FR 70997 (December 8, 2004) ("PRC Shrimp LTFV Final"); see also Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 FR 5149 (February 1, 2005) ("Order").

³¹ See SAA at 870.

³² See *id.*

³³ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

³⁴ See SAA at 870; see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183 (March 11, 2005).

³⁵ See PRC Shrimp LTFV Final; see also Order.

³⁶ See Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review; 2011–2012, 78 FR 56209 (September 12, 2013) and accompanying Issues and Decision Memorandum at Comment 8 ("AR7 Corroboration"); see also "Results of Redetermination Pursuant to Court Remand" Court No. 11-00335 Slip Op 13-93 (CIT July 23, 2013) ("AR5 Remand II"), and "Final Results of Redetermination Pursuant to Court Remand" Court No. 10-00275 Slip Op. 13-89 (CIT July 19, 2013) ("AR4 Remand"), available at <http://enforcement.trade.gov/remands/>.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers from Mexico,³⁷ the Department disregarded the highest margin in that case as adverse best information available (the predecessor to “facts available”) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been judicially invalidated.³⁸

Pursuant to section 776(c) of the Act, the Department corroborated the petition rate of 112.81 percent by comparing the petition margin to the individual control number (“CONNUM”) margins calculated for Shantou Red Garden Foodstuff Co. (“Red Garden”), as adjusted following litigation.³⁹ We found that since the petition margin of 112.81 percent was within the range of Red Garden’s calculated CONNUM margins, the margin of 112.81 percent has probative value. Accordingly, in light of the corroboration of this margin in AR7, AR5 Remand II and AR4 Remand, we find that the rate of 112.81 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate has relevance.

As the 112.81 percent rate is both reliable and relevant, we find that it has probative value. Accordingly, we determine that the calculated rate of 112.81 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated. Thus, we have assigned this AFA rate to exports of the subject merchandise from the PRC-wide entity, including Hilltop and Newpro.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of these preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Preliminary Determination of No Shipments

As discussed in the Background section above, Allied Pacific Group, Smart Foods, and SYEC filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR. On May 31, 2013, the Department sent an inquiry to CBP to determine whether CBP entry data is consistent with the no shipment certifications from Allied Pacific Group, Smart Foods, and SYEC, and received no information contrary to those statements. As CBP only responds to the Department’s inquiry when there are records of shipments from the company in question⁴⁰ and no party submitted comments, we preliminarily

³⁷ Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (“Fresh Cut Flowers from Mexico”).

³⁸ See D&L Supply Co., 113 F.3d at 1221 (the Department will not use a margin that has been judicially invalidated).

³⁹ See AR7 Corroboration; AR5 Remand II; AR4 Remand.

⁴⁰ See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products From Brazil: Notice of Rescission of Antidumping Duty Administrative Review, 75 FR 65453, 65454 (October 25, 2010); Certain Circular Welded

determine that SYEC had no shipments during the POR. However, because Allied Pacific Group and Smart Foods have been found to be part of the PRC-wide entity in prior segments, and continue to be part of the entity in this review, we are not making a determination of no shipments with respect to these companies for this preliminary determination.

Based on SYEC's certification and our analysis of CBP information, we preliminarily determine that SYEC did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in NME cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to SYEC and issue appropriate instructions to CBP based on the final results of the review.⁴¹

Adjustment of Assessment Rate for Certain Shipments by Newpro

Based on information submitted by Newpro, which has been determined to be part of the PRC-wide entity, the Department preliminarily determines that certain shipments made by Newpro that were not included in Newpro's U.S. sales database, should be considered part of Newpro's universe of U.S. sales. Record evidence suggests that Newpro had, or should have had, knowledge that these sales were ultimately destined for the United States. Newpro's refusal to provide documentation requested by the Department, refusal to respond to any additional requests for information and refusal to participate in a verification of its questionnaire responses prevented the Department from fully investigating Newpro's activities during the POR and raises serious concerns regarding Newpro's conduct and credibility over the course of this review. Accordingly, if this recommendation is adopted in our final results, the Department intends to adjust the assessment rates for certain entries of subject merchandise from Newpro to account for the total amount of duties that would have been collected on Newpro's full universe of U.S. sales. Further, because this issue involves potentially false representations to CBP, the Department intends to transmit all information collected over the course of this review to CBP for further enforcement, if necessary. As the details of this issue and our calculation of the assessment adjustment contain business proprietary information, a complete discussion is contained in the Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V, "Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Business Proprietary Memo for the Preliminary Results" dated concurrently with this memorandum.

Carbon Steel Pipes and Tubes from Taiwan: Notice of Intent to Rescind Administrative Review, 74 FR 3559, 3560 (January 21, 2009); and Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review, 73 FR 9292, 9293 (February 20, 2008).

⁴¹ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011) and the "Assessment Rates" section, below.

CONCLUSION

We recommend applying the above methodology for these preliminary results.

✓
Agree Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

18 MARCH 2014
Date